

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:22-cv-00068-BO

YOLANDA IRVING, et al.,

Plaintiffs,

v.

THE CITY OF RALEIGH, et al.,

Defendants.

**OMAR I. ABDULLAH'S MOTION
FOR LEAVE TO FILE EXHIBIT
UNDER SEAL**

Pursuant to Local Civil Rule 79.2 and in accordance with Section V.G. of the Electronic Case Filing Administrative Policies and Procedures Manual, Defendant Omar I. Abdullah ("Abdullah"), through counsel, hereby seeks an Order from the Court allowing him to file Exhibit A to Declaration of Omar I. Abdullah under seal. In support of this motion, Abdullah respectfully shows the Court the following:

1. On March 31, 2023, Abdullah filed a Motion for Summary Judgment, accompanying Memorandum of Law in Support of Motion for Summary Judgment, and Statement of Material Facts pursuant to Local Civil Rule 56.

2. This Motion is being filed pursuant to the Consent Protective Order entered in this matter on October 5, 2022 (DE 126) wherein the parties agreed and the Court ordered that certain documents may be designated "Confidential" and that such documents designated as "Confidential" shall be restricted and filed under seal.

3. Pursuant to the Consent Protective Order, the following documents are considered "Confidential Materials":

- h. information and/or documents that constitute or contain records of criminal investigations or records of criminal intelligence information as defined by N.C.G.S. § 132-1.4;
- i. information and/or documents containing Sensitive Public Security Information as defined by N.C.G.S. § 132-1.7; or
- j. information and/or documents that disclose law enforcement techniques, guidelines, and/or procedures if disclosure of such information and/or documents could reasonably be expected to risk circumvention of the law, endanger witness and law enforcement personnel, or hinder law enforcement's ability to conduct ongoing or future investigations.

4. Further, Paragraph 10 of the Protective Order states that any such document designated as “Confidential” is a restricted access document and shall be filed under seal.

5. Filed with the Motion, Memorandum, and Statement of Material Facts is an Appendix of documents submitted pursuant to Local Civil Rule 56.1 in support of the Motion for Summary Judgment, including 2018 lab results marked as Exhibit A to the Declaration of Omar I. Abdullah.

6. Exhibit A contains information related to a criminal investigation and, thus, falls under the provisions of the Consent Protective Order, as well as N.C.G.S. § 132-1.4 and should be filed under seal.

7. While Abdullah recognizes that “common law presumes a right of the public to inspect and copy all judicial records and documents.” *Virginia Dep't of State Police v. Washington Post*, 386 F.3d 567, 575 (4th Cir. 2004), this “presumption of access, however, can be rebutted if countervailing interests heavily outweigh the public interests in access,” and “[t]he party seeking to overcome the presumption bears the burden of showing some significant interest that outweighs the presumption.” *Id.* (internal citations omitted).

8. Significant interest exists for protecting the information contained in Exhibit A to

Omar I. Abdullah's Declaration and overcomes the "presumption of access" of the public to this information and outweighs the minimal interest of the public in access to information of the type at issue here. Finally, no less onerous alternative to sealing the documents is available because redacting the documents to remove all potentially sensitive material would render them meaningless.

9. Pursuant to Local Rule 79.2(a) any "party desiring to file a document under seal must first file a motion seeking leave in accordance with Section V.G. of the CM/ECF Policy Manual."

10. A proposed Order is filed contemporaneously herewith.

WHEREFORE, Defendant Omar I. Abdullah respectfully requests that the Court grant this motion and allow Abdullah to file Exhibit A to his Declaration under seal.

Respectfully submitted, this the 31st day of March, 2023.

/s/ Jason R. Benton

Jason R. Benton

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, the foregoing **Omar I. Abdullah's Motion for Leave to File Exhibit Under Seal** was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send notification and serve same upon counsel of record via the Court's electronic case filing system.

This the 31st day of March, 2023.

/s/ Jason R. Benton

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